

§ 163.20

25 CFR Ch. I (4–1–13 Edition)

§ 163.20 Execution and approval of contracts.

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the beneficial Indian owner(s) or the Secretary acting pursuant to a power of attorney from the beneficial Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and beneficial Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for a decedent's estate where ownership has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the forest management deductions from such payments.

(4) When consent of only a majority interest has been obtained, the Secretary may execute the sale on behalf of all owners to fulfill responsibilities to the beneficiaries of the trust. In such event, the contract file must contain evidence of the effort to obtain consent of all owners. When an individual cannot be located, the Secretary, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale for particular in-

terests. For Indian forest land containing undivided restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest has been obtained.

§ 163.21 Bonds required.

(a) Performance bonds will be required in connection with all sales of forest products, except they may or may not be required, as determined by the approving officer, in connection with the use of forest products by Indian tribal forest enterprises pursuant to this part in §163.13 or in timber cutting permits issued pursuant to §163.26 of this part.

(1) In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed \$15,000, the bond shall be at least 20 percent of the estimated stumpage value.

(2) In sales in which the estimated stumpage value exceeds \$15,000 but is not over \$150,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than \$3,000.

(3) In sales in which the estimated stumpage value exceeds \$150,000, but is not over \$350,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than \$22,500.

(4) In sales in which the estimated stumpage value exceeds \$350,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than \$35,000.

(b) Bonds shall be in a form acceptable to the approving officer and may include:

(1) A corporate surety bond by an acceptable surety company;

(2) A cash bond designating the approving officer to act as trustee under terms of an appropriate trust;

(3) Negotiable U.S. Government securities supported by an appropriate trust instrument; or

(4) An irrevocable letter of credit.

§ 163.22 Payment for forest products.

(a) The basis of volume determination for forest products sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece

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count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of Indian tribal forest enterprises pursuant to §163.13 of this part, payment for forest products will be required in advance of cutting for timber, or removal for other forest products.

(b) Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document to make advanced deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to §163.25 of this part, into accounts designated by such Indian tribe. Such accounts may be in one or more of the following formats:

(1) Escrow accounts at a tribally designated financial institution for receiving deposits with bids and advance deposits from which direct disbursements for timber harvested shall be made to tribes and forest management deductions accounts; or

(2) Tribal depository accounts for receiving advance payments, installment payments, payments from Indian tribal forest enterprises, and/or disbursements from advance deposit accounts or escrow accounts.

(c) The format must allow the Secretary to maintain trust responsibility through written verification that all required deposits, payments, and disbursements have been made.

(d) Terms and conditions for payment of forest products under lump sum (predetermined volume) sales shall be specified in forest product contract documents.

§ 163.23 Advance payment for timber products.

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from allotted, trust or restricted Indian forest land shall provide for an advance payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be

specified in contracts. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each ownership in a sale exceed 50 percent of the bid stumpage value. Advance payments shall be credited against the timber of each ownership in the sale as the timber is cut and scaled at stumpage rates governing at the time of scaling. Advance payments are not refundable.

(b) Advance payments may be required on tribal land. When required, advance payments will operate the same as provided for in §163.23(a) of this part.

§ 163.24 Duration of timber contracts.

After the effective date of a forest product contract, unless otherwise authorized by the Secretary, the maximum period which shall be allowed for harvesting the estimated volume of timber purchased, shall be five years.

§ 163.25 Forest management deductions.

(a) Pursuant to the provisions of 25 U.S.C. 413 and 25 U.S.C. 3105, a forest management deduction shall be withheld from the gross proceeds of sales of forest products harvested from Indian forest land as described in this section.

(b) Gross proceeds shall mean the value in money or money's worth of consideration furnished by the purchaser of forest products purchased under a contract, permit, or other document for the sale of forest products.

(c) Forest management deductions shall not be withheld where the total consideration furnished under a contract, permit or other document for the sale of forest products is less than \$5,001.

(d) Except as provided in §163.25(e) of this part, the amount of the forest management deduction shall not exceed the lesser amount of ten percent (10%) of the gross proceeds or, the actual percentage in effect on November 28, 1990.

(e) The Secretary may increase the forest management deduction percentage for Indian forest land upon receipt of a written request from a tribe supported by a resolution executed by the